

VOLPE

4/2/09

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1 231
2 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
3 x
4 JOHN RESTIVO, DENNIS HALSTEAD, MELISSA LULLO,
JASON HALSTEAD, HEATHER HALSTEAD and TAYLOR
HALSTEAD,
5 Plaintiffs,
6 - against - CV-06-6720
(JS)(WDW)
7 NASSAU COUNTY, JOSEPH VOLPE, in his
individual capacity, ROBERT DEMPSEY, in his
8 individual capacity, FRANK SIRIANNI, in his
individual capacity, MILTON GRUBER, in his
9 individual capacity, HARRY WALTMAN, in his
individual capacity, ALBERT MARTINO, in his
10 individual capacity, CHARLIE FRAAS, in his
individual capacity, THOMAS ALLEN, in his
11 individual capacity, RICHARD BRUSA, in his
individual capacity, VINCENT DONNELLY, in his
12 individual capacity, MICHAEL CONNAUGHTON, in
his individual capacity, WAYNE BIRDSALL, in
13 his individual capacity, WILLIAM DIEHL, in his
individual capacity, JACK SHARKEY, in his
14 individual capacity, DANIEL PERRINO, in his
individual capacity, ANTHONY KOZIER, in his
15 individual capacity, DETECTIVE SERGEANT
CAMPBELL (SHIELD #48) in his individual
16 capacity, ROBERT EDWARDS, in his individual
capacity, SEAN SPILLANE, in his individual
17 capacity, JOHN DOE OFFICERS AND DETECTIVES
#1-10, in their individual capacities, and
18 RICHARD ROE SUPERVISORS #1-10, in their
individual capacities,
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Defendants.
20 x
21 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
..... x
22 JOHN KOGUT,
23 Plaintiff,
24 - against - CV-06-6695
(JS)(WDW)
25 THE COUNTY OF NASSAU, POLICE

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1 COMMISIONER DONALD KANE, POLICE COMMISSIONER
2 WILLIAM J WILLETT (2005), POLICE COMMISSIONER
JAMES LAWRENCE, DETECTIVE SEAN SPILLANE (HEAD
3 OF HOMICIDE 1985), DETECTIVE DENNIS FARRELL
(HEAD OF HOMICIDE 2005), DETECTIVE JOSEPH VOLPE,
4 DETECTIVE ROBERT DEMPSEY, DETECTIVE ALBERT
MARTINO, DETECTIVE WAYNE BIRDSALL, DETECTIVE
5 MILTON G. GRUBER, DETECTIVE CHARLES FRAAS,
DETECTIVE FRANK SIRIANNI, DETECTIVE HARRY
6 WALTMAN, P.O. MICHAEL CONNAUGHTON, P.O.
WILLIAM DIEHL, and JOHN DOES 1-5,

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Defendants.

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9
100 Federal Plaza
10 Central Islip, New York
11 April 6, 2009
11:27 A.M.

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15 CONTINUED VIDEOTAPE DEPOSITION of JOSEPH
16 VOLPE, one of the Defendants, taken by Plaintiffs,
17 pursuant to Notice, held at the above noted time
18 and place, before a Notary Public of the State of
19 New York.

A P P E A R A N C E S:

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BY: MICHAEL FERGUSON

Deputy County Attorney

and

LIORA M. BEN-SOREK

Deputy County Attorney

ALSO PRESENT:

CARLOS NUNEZ, Videographer

(Debbie Smith lead sheet was marked as Plaintiff's Exhibit 158 for identification, as of this date.)

(Statement of Deborah Smith was marked as Plaintiff's Exhibit 159 for identification, as of this date.)

(Debbie Smith call was marked as Plaintiff's Exhibit 160 for identification, as of this date.)

(Interview 12/6/84 of John T. French was marked as Plaintiff's Exhibit 161 for identification, as of this date.)

(Loss from John French's car was marked as Plaintiff's Exhibit 162 for identification, as of this date.)

(John French statement was marked as Plaintiff's Exhibit 163 for identification, as of this date.)

(People who were in French's car was marked as Plaintiff's Exhibit 164 for identification, as of this date.)

(French car fingerprint reports was marked as Plaintiff's Exhibit 165 for

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identification, as of this date.)

(French missing car report was marked as Plaintiff's Exhibit 166 for identification, as of this date.)

(Crime scene search unit document was marked as Plaintiff's Exhibit 167 for identification, as of this date.)

(Missing person flier for Theresa Fusco was marked as Plaintiff's Exhibit 168 for identification, as of this date.)

(11 pages of photos was marked as Plaintiff's Exhibit 169 for identification, as of this date.)

(Google area map was marked as Plaintiff's Exhibit 170 for identification, as of this date.)

THE VIDEOGRAPHER: This is tape number one, Volume 4, of the continuation of the videotape deposition of Mr. Joseph Volpe.

The time is now 11:27 A.M. and will the court reporter please reswear the witness.

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2 J O S E P H V O L P E, the witness herein, having
3 been first duly sworn by Jeanette L.
4 Hoolan, a Notary Public in and for the
5 State of New York, was examined and
6 testified as follows:

7 THE COURT REPORTER: Would you state
8 your name on the record, please?

9 THE WITNESS: Joseph P. Volpe,
10 V O L P E.

11 CONTINUED EXAMINATION BY

12 MR. SCHECK:

13 Q Mr. Volpe, it was a little over
14 two weeks ago that we last discussed the wire tap
15 affidavit that you submitted in this case.

16 Do you remember that?

17 A Yes.

18 Q And have you had a chance to read
19 your answers in the deposition that we had
20 two weeks ago?

21 A No.

22 Q Have you thought about it some more?

23 MR. FERGUSON: Objection.

24 A Oh, of course, yes.

25 Q Okay. And what happened the last

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time is that when you saw paragraph 10 of the Exhibit 157, the eavesdropping warrant, we agreed that you noticed a problem there, right?

MR. FERGUSON: Objection.

A Yes.

Q And the problem was that in this affidavit you indicated that a search of that van produced a hair consistent with Theresa Fusco's and this affidavit you filled out was done at a time before Detective Fraas testified he could have completed his examination wherein he found a hair consistent with Theresa Fusco's, correct?

A My problem with this is that I didn't recall. The basic problem I had with this I didn't recall who told me or gave that information prior to going for the affidavit on the 29th of March.

Q So you now have an explanation?

A No, I don't.

MR. FERGUSON: Objection to the form of the question.

A I just don't recall who told me about the hairs, you know, I can't speculate or guess.

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Q Okay. So let's see --

A That's what the problem is I'm
having.

Q So let's see if I got this right.
We reviewed last time the testimony of Fraas,
correct?

A Right.

Q He's the hair examiner, right?

A That's correct.

Q And when we reviewed it you agreed
that based on his testimony he couldn't have
possibly completed his examination of the hair
until March 31st, which was at least two days
after you swore out this affidavit, right?

MR. FERGUSON: Objection.

A No, I thought that Fraas said that
he could do it anywhere from four hours to four
weeks, that type of statement that he made, to you
obviously.

Q Didn't he say --

A Didn't he say hours?

Q Didn't he say he could not have
possibly completed the hair examination within
three or four days?

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MR. FERGUSON: Objection.

A I don't recall.

MR. FERGUSON: It's not for him to say what somebody else could have said or did say, the record will speak for itself.

MR. SCHECK: We have these questions and answers. I reviewed the deposition with him of Mr. Fraas and so let's just be clear about that, okay.

MR. FERGUSON: I'm not disputing anything that you say --

MR. SCHECK: You read the deposition from last week, sir?

MR. FERGUSON: Whatever I did, I did. It's not for you to know that. I'm not here to be deposed.

MR. SCHECK: In terms of your objection I just want to make sure you read last week's deposition. Did you?

MR. FERGUSON: I am not here to be deposed. I'm objecting to your questions where I feel they are improper.

MR. SCHECK: Let's just keep it at that.

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2 Q So if I understand you now, we agree
3 that after we reviewed Fraas' testimony he, at
4 least based on his deposition and trial testimony
5 in this case, indicated he could not have possibly
6 have finished the hair examination by March 29th,
7 the date that you swore out this affidavit saying
8 that there was a hair consistent with Theresa
9 Fusco's in the Restivo van?

10 MR. FERGUSON: Same objection.

11 A I thought we said between four hours
12 and four weeks. If you can correct me on that,
13 that's what he said.

14 Q You now think ..

15 A I'm not sure.

16 MR. FERGUSON: Wait for a question.

17 Q All right, here we go. Let me see
18 if I understand what you're saying. You don't
19 recall Fraas saying to you prior to filling out
20 this affidavit and prior to him completing the
21 hair examination, oh, Volpe, we've discovered a
22 hair consistent with Theresa Fusco, right?

23 A If I have that information it may
24 not have come from Fraas, come from a supervisory
25 level, I just don't recall. It doesn't have to

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come from Fraas.

Q Who else could it have come from?

A Could have come Birdsall, could have come from one of the supervisors.

Q Who would the supervisor be?

A Spillane would have been the boss, Lieutenant Spillane.

Q So you're thinking that Fraas told Lieutenant Spillane that he had found a hair consistent with Theresa Fusco's in the Restivo van before he completed his hair examination?

MR. FERGUSON: Objection. He didn't say that.

Q Is that what you're thinking?

A No, that's not what I'm thinking nor did I say that. What I'm saying is I don't recall who would have given me that information that I would have in turn put in paragraph 10 here, that's what my issue is.

Q So you think Birdsall could have told you that?

A I don't recall.

Q Let me -- so even though we reviewed together Fraas' testimony that he could

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VOLPE

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2 not have completed his hair examination until
3 after you filled out this affidavit on March 29th,
4 it's your assumption, I guess, that somebody must
5 have told you that there was a hair consistent
6 with Theresa Fusco's in the Restivo van because
7 you wouldn't put such a statement in a warrant if
8 nobody had told you that, right?

9 A That's correct.

10 Q And that's because you would never
11 put anything in an affidavit for a warrant that
12 nobody had told you to be true?

13 A If I hadn't had that information I
14 wouldn't have put it in there.

15 Q Well, let's go back to paragraph 10.
16 That says, again, a search of the van has produced
17 hair consistent with Theresa Fusco's and possible
18 human blood.

19 Do you see that?

20 A Yes.

21 Q Okay. So who was it that processed
22 the van, Birdsall?

23 A Fraas and Birdsall.

24 Q And you didn't go inside and process
25 the van, did you?

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A No.

Q So they reported back to you their reports, right?

A Not on the first night, just what they had collected.

Q So you were counting on Birdsall to report to you whether or not he found possible human blood in the van?

A Or certainly him or one of his supervisors or one of my supervisors.

Q But as far as you know it was Birdsall that was processing the van?

A As far as I know, yes.

Q So you would expect that Birdsall would have been the person that reported back to you that there was possible human blood in the van, right?

MR. FERGUSON: He just said three times the list of people it could have been. He's already answered that three times.

Q Can you answer my question?

A I've already -- could have been anyone, could have been any one of my supervisors or a lab supervisor.

VOLPE

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2 Q All right. Let's go back to this
3 issue of human blood. Are you with me?

4 A I'm with you, yes.

5 Q Birdsall was the one that processed
6 the van, right?

7 A Correct.

8 Q So Birdsall, if there were possible
9 human blood in the van Birdsall would have told it
10 to you, right?

11 A No, he would have told it to his
12 supervisor.

13 Q Let's just go through the
14 possibilities. He might have told it directly to
15 you, that's one possibility, right?

16 A Might have, yes.

17 Q And he might have told it to his
18 supervisor who would then in turn told it to you,
19 right?

20 A Or told it to one of my supervisors.

21 Q Okay. Now, you would not you're
22 telling us put in a warrant this affidavit of
23 March 29th, that there was possible human blood in
24 the van, unless you would receive that information
25 from Birdsall himself, Birdsall's supervisor or

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your supervisor, right?

A That would be it, correct.

Q And the source of the observation that there was possible human blood in the van, that would have to come from Birdsall, right, because he's the one that processed the van?

A I don't know that. I don't know if he had anybody assisting him or supervising him, I don't know that.

Q Now, this is a copy of Birdsall's deposition in this case and tabbed for you first page 71 and I'm starting at line 10. Okay, are you with me?

A I got you.

Q And Mr. Birdsall was asked:

Question: "Did you collect any blood from the van?"

Answer: "No."

Question: "Did you see anything that was possibly human blood in the van?"

Answer: "No."

Question: "Did you collect any semen from the van?"

Answer: "No."

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2 Question: "Did you conduct any
3 serological testing whatsoever on any part of the
4 van or anything collected from it?"

5 Answer: "No."

6 Question: "Did you tell anybody,
7 anybody, that you had found anything that was
8 possible human blood?"

9 Answer: "No."

10 Do you see that?

11 A Yes.

12 Q How do you explain that?

13 MR. FERGUSON: Objection.

14 A Well, you're describing what
15 Birdsall said.

16 Q This is Birdsall's testimony, right?

17 A Yes.

18 MR. FERGUSON: Objection.

19 A That doesn't mean that there wasn't
20 blood on clothing or some other area in the van.

21 Q Well ..

22 A You're asking me about the van or
23 was he talking about the vehicle in its entirety
24 or its contents?

25 Q Let's talk about your affidavit,

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your affidavit on March 29th said to the judge that, "a search of that van has produced hair consistent with Theresa Fusco's and possible human blood." Right?

A Yeah.

Q It didn't say possible human blood on a piece of clothing, did it?

A No.

Q It said possible human blood in the van?

A In the van, but it could have been anywhere, could have been on a blanket.

Q Okay. On a blanket, well --

A Could have been on anything.

Q If there was possible human blood on a blanket in the van wouldn't you put that in your affidavit?

MR. FERGUSON: It says in the van. You're saying wouldn't he put it in the affidavit --

MR. SCHICK: Don't, don't. I don't want to hear any speaking objections from you, sir.

MR. FERGUSON: This is not a

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speaking objection.

MR. SCHECK: No, it is a speaking objection. Don't suggest any answers to the witness.

Q Now I'm asking if you had found human blood on the blanket in the van wouldn't you have stated that in the affidavit?

A I may not have known it at that time. It's a very benign statement, that there's human blood in the van, wherever I got it from.

Q Well, based on Birdsall's testimony over here on page 71 of his testimony, when he says, did you tell anybody you had found anything that was possible human blood and the answer is no, do you see that?

A Yes.

Q Well, isn't it pretty clear that according to Birdsall's testimony you couldn't have got that information from him or from him reporting to his supervisor or from Birdsall reporting to his supervisor to your supervisor, right?

MR. FERGUSON: Just note my objection.

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A I don't -- I don't know how to answer that in a way that would be satisfactory. I just, I recall in the same time frame being told about there were hairs similar and that there was possible human blood. I can't tell you who it was, can't tell you.

Q Let's take a look at page 150 -- 115 of the Birdsall deposition starting at line 20. You with me?

Question: "With the exception of identifying hairs on a blanket that you removed and forwarded to Detective Fraas did your examination of any items yield any probative evidence?"

Answer: "No."

Question: "No blood?."

Answer: "No blood."

Question: "No semen?"

Answer: "No semen."

Question: "Nothing of value to the investigation?"

Answer: "No."

Do you see that?

A Yes, I do.

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Q So Birdsall is being clear that he didn't see anything in the van, on a blanket, that was possible blood; right?

A That's what he's indicating here, yeah.

Q And he's the one, to the best of your knowledge, that processed the van for serological fluids, right?

A Yes, I guess. I don't know who else would have done it.

Q Well, you have any idea whatsoever how you could write paragraph 10 of this affidavit based on information from Birdsall?

A But I'm not saying I got it from Birdsall, you know. I put that information there on Birdsall. I just don't recall who gave it to me, but I got it.

Q How do you know you got it?

A Because I put it in paragraph 10.

Q Right.

A I wouldn't have recorded that.

Q So it's not possible at all that you put in paragraph 10 that a hair consistent with Theresa Fusco was found in the van because you had

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advance knowledge that a hair from Theresa Fusco's
dead body was already in the samples that had had
been forwarded to Fraas for examination?

MR. FERGUSON: Just note my
objection.

A Not at all. I had no idea.

Q Okay. Now I'd like to ask you just
a few questions about how communications and
passage of paperwork goes between the homicide
detectives and the DA, okay?

A Okay.

Q We have been -- what has been
produced to us is a lot of files that have been
called the homicide file in this case, okay?

A Okay.

Q And it was the practice at the time
of this investigation for homicide detectives to
keep a file of what was going on in the case,
right?

A Yes.

Q And this would include your
handwritten notes, right?

A Yes.

Q It would include lead sheets,

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1 correct?

2 A Yes.

3 Q It would include reports about the
4 examination of physical evidence?
5

6 A Correct.

7 Q It would include witness interviews?

8 A Yes.

9 Q Now, was it your practice to turn
10 over absolutely every document in the homicide file
11 to the District Attorney?

12 A I would hope so.

13 Q Every document?

14 A Well, it should have. The file
15 should be -- the file should be in the DA's the
16 same or similar or the same as the homicide file.

17 Q Are you telling me that it was your
18 practice that when the District Attorney opened up
19 an investigation of the case that you would turn
20 over to the District Attorney's office as opposed
21 to keeping it at the police department, every
22 document in the homicide file?

23 Do you see what I'm asking you?

24 A I'd like to believe that every
25 document went over or went with it as the file was

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brought over there, that I don't know, I don't know for sure.

Q How would the file get brought over there? I don't understand.

A I brought it when I went to court, at the onset with meetings with the District Attorney as to where it was going, if there were any arrests. Updates on witness statements, on the investigation as it was done, SIB reports or lab reports.

You would keep the DA -- you would try to keep the DA up to breast as to what you were doing.

Q Who would do that, would you as lead homicide detective?

A Could have been, one of the people I could have delegated that to someone depending on how busy I was.

Q Was there any particular rule or regulation in the police department that said that every document in a homicide investigation should be turned over to the District Attorney?

A Well, every document, you mean including newspaper articles and the like?

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Q Or a lead sheets or lead sheets?

A Well, sure, because they would be subsequently used I believe.

Q What about a lead that wasn't pursued?

A I don't -- I don't recall.

Now we're talking particularly in the Fusco matter?

Q Yes. In this case, what about a lead that didn't pan out that had nothing to do with John Restivo, Dennis Halstead or John Kogut, would you have turned over such lead sheets?

A I would like to believe I would have turned that over, I just don't recall.

Q But there's no way for you to know for sure that you would have turned over lead sheets from parts of the investigation that didn't work out and didn't connect Kogut, Restivo or Halstead?

A I would believe I would have tried to maintain that file to go to the DA.

Q You believe you would, but there was no process that would assure that you would have turned over absolutely every document?

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A I just don't recall.

Q Now, I'd like to show you a document that we've premarked, actually three documents that we've premarked, Exhibit 158.

A Can I close this one?

Q Yes.

That is a lead sheet from a witness named Debbie Smith, a document 159, that is a statement from Debbie Smith and a document that is 160 which is a note from Detective Mitchell dated 12/11/84 quoting Debbie Smith.

Do you see all those.

Here, counsel you can have copies.

Now does the name Debbie Smith ring a bell to you?

A It didn't until as I read.

MR. FERGUSON: Could you give him a chance to look at it a second.

Q I'll go over with you, I'll read it to you, but does the name Debbie Smith ring a bell to you? I see you're reading. Why don't we just read this together. Why don't we start with document 158.

Now you recognize that this is what

1 VOLPE 256

2 they call a homicide lead sheet?

3 A Yes.

4 Q All right. And it indicates that

5 the lead was received by you on December 9th,

6 1984, at 4:25?

7 A Yes.

8 Q And how would that work, would that

9 mean that you directly got the call that's

10 explained in this document or it could have been

11 passed on to you, how would that work?

12 A Could be either way.

13 Q And under the lead source it says

14 Debbie Smith, right?

15 A Yes.

16 Q And that the nature of the lead,

17 called and stated between 11/17 and 11/20 she was

18 driving over at Sunrise and Rockland between 2100

19 and one hours, meaning between, what would that

20 be, 11 -- no, what's 2100 hours?

21 A Nine p.m.

22 Q Nine p.m. and 1 a.m., right?

23 A No, midnight.

24 Q Sorry?

25 A No, midnight. 0001 is a minute

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after 12.

Q That would be a minute after 12,
okay. So from 9 o'clock to a minute after 12
during that period she was at Sunrise and Rockland
and she heard a scream, right?

A Correct.

Q That's what it says. And then she
went, what is that word?

A Where?

Q On the third line, there's three
letters there, something to railroad tracks?

A Got, G-O-T.

Q So this is your handwriting, right?

A Yes.

Q You got to say yes?

A I said yes.

Q When she got to the railroad tracks
on Rockland there was a car parked with no one in
it. Auto possibly tan four-door older vehicle
large windows, had tools and dark colored blanket
in auto, right?

Do you see that?

A Yes, yes.

Q Does that ring any bell to you?

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A Uh, I remember, I remember the lead.

3

I don't remember the substance of what I did after
4 that.

5

Q Okay. So why don't you take a look

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at Exhibit 159, the statement of Debbie Smith, do
7 you see that, this one, 159?

8

A I'm going to read the lead sheet

9

first.

10

Q Okay, read the lead sheet.

11

All right, have you finished 158?

12

A Yes.

13

Q Having read the lead sheet which is

14

a document of two pages, 158, does this ring a

15

bell, do you remember this Debbie Smith interview?

16

A Not too clearly, no.

17

Q Now, turning to 159, and you can see

18

that this is entitled statement of Debra L. Smith

19

and it's dated December 9th, 1984, right?

20

A Yes.

21

Q And that's the same day that she

22

called in, right?

23

A Yes.

24

Q And so -- and do you recognize the

25

signature at the bottom of the page, is that

1 VOLPE 259
2 Sirianni?
3 A No.
4 Q Who is that?
5 A That's Detective Pierce.
6 Q Detective Pierce?
7 A George Pierce.
8 Q So Detective Pierce went out and
9 took a statement from her, right?
10 A I think Pierce was with Detective
11 Lane, yeah.
12 Q Detective Pierce, right, do you see
13 that?
14 A Yes.
15 Q So Detective Pierce went out and
16 took a sworn statement from her that very day that
17 she called in, December 9th, right?
18 A Yes.
19 Q And the beginning of this statement
20 he has her -- she says, I have been told by the
21 detective who is writing this statement that any
22 false statement I make here are punishable as a
23 Class A misdemeanor pursuant to Section 210.45 of
24 the Penal Law of the State of New York, right?
25 A Yes.

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VOLPE

260

Q So this is a serious statement,
she's being told if she makes a false statement
this could be a crime, right?

A Yes.

Q All right. And she then describes
an incident and the incident she describes is that
she went to her boyfriend's house for the evening,
they had an argument and she left his home to go
home, right, and she started driving home.

Do you see that on the first page?

MR. FERGUSON: Could he have an
opportunity to read the three pages before
you question him about this document.
You're asking him questions and he's trying
to read, it's a three-page document.

MR. SCHECK: I was reading it to
him, but if he wants to read it first.

MR. FERGUSON: But you're giving him
a document ..

MR. SCHECK: No, no, let him read
the whole thing first, if that's what you're
asking.

Go ahead, you take your time.

(Pause in proceedings.)

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VOLPE 261

Q You're finished Exhibit 159, the three-page sworn statement of Debbie Smith?

A Yes.

Q Now, does it refresh your recollection?

A I don't remember Debbie Smith.

Q Okay. Now, let's turn to the second page and I'm going to -- she says on page 2, "I drove north on Rockland Avenue to Sunrise Highway, the traffic light was red and I stopped for the light. I had my window partly opened because I was smoking. While I was sitting at the light I heard a woman scream. I rolled my window down and listened, but that I did not hear anything else. The scream came from the left like it was from up high. I looked at the railroad elevated because that seemed to be the direction that the scream came from."

Do you see that?

A Yes.

Q Now, this location of Rockland and Sunrise, if she's driving in the direction that she states, right?

A Yes.

VOLPE

262

1
2 Q That scream would come from the area
3 where Theresa Fusco's body was found, right?

4 A I don't know which side of the
5 tracks she was on. Rockland, there's a traffic
6 light. The traffic light would be south of the
7 entranceway into where Theresa's body was found.
8 She couldn't have heard her from Sunrise and
9 Rockland.

10 Q She couldn't have heard her from
11 Sunrise and ..

12 A I don't believe so.

13 Q She's at Sunrise and Rockland.

14 A Sunrise and Rockland, she's got to
15 be on the other side of Sunrise. She's got to be
16 on the south side.

17 Q She said, I heard it from the left,
18 okay, her left?

19 A Well, the left would be inconsistent
20 with where the body was found, but geographically
21 she's going to be on the other side of Sunrise
22 Highway. She's going to be on the south side
23 light facing north.

24 Q Let's see if we can orient
25 ourselves.

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VOLPE 263

A She's six lanes away, in other words.

Q And I'll show you a document that was marked Exhibit 170, do you see that?

MR. FERGUSON: Could you hold it a second and give us a chance to orientate ourselves as to what this is.

MR. SCHECK: And 128 is a larger map, just a blow-up that we've put here, okay?

MR. FERGUSON: Yeah, I know it is. This map, it's a Google map from 2009. This is Exhibit what?

MS. BEN-SOREK: 170.

MR. FERGUSON: This is Exhibit 170?

Q Now let me show you I have a version of Exhibit 170, we have a large one here. Now the scene in this case, the location is in the north bank of the Long Island Rail Road tracks on the north side of Sunrise Highway between Rockland Avenue and Park Drive in Lynbrook, right?

MR. FERGUSON: Say it again, would you please, on what side?

Q Sure. I'm giving you Plaintiff's

VOLPE

264

1
2 Exhibit 45?

3 MR. FERGUSON: 45?

4 MR. SCHECK: Yes.

5 Q I'll show this to you. This is a ..
6 it's your report, all right? And I think I'm
7 reading from it accurately.

8 MR. FERGUSON: What are you reading?

9 MR. SCHECK: Plaintiff's 45. Can I
10 have the document so I can read it? Let me.

11 A North bank of the railroad tracks?

12 Q Yes. It said the scene in this case
13 in the north bank of the Long Island Rail Road
14 tracks on the north side of Sunrise between
15 Rockland Avenue and Park Drive in Lynbrook; is
16 that accurate?

17 A Yes, I'm okay with that.

18 Q And let me show you on Exhibit 170,
19 this is 178. Do you see where the number 2 is?

20 A Yes. I do.

21 Q And that's been identified as the
22 location of Theresa Fusco's body found on December
23 5th, 1984.

24 Does that look accurate to you?

25 MR. FERGUSON: Just note my

1 VOLPE 265

2 objection.

3 This is not a map drawn to scale; is

4 that correct?

5 A Generally speaking --

6 Q It's a fair and accurate

7 representation of --

8 A Kind of.

9 Q Of where the body is based on the

10 map, would you not agree?

11 MR. FERGUSON: Just note my

12 objection. There's no scale on this map at

13 all.

14 Q This is a Google map, right?

15 A Yes.

16 Q And admittedly it's not drawn to

17 scale. But would you agree that location number 2

18 here that's identified as location of Theresa

19 Fusco's body is in about the area where the body

20 was found on December 5th?

21 A Well, on the Google map I wouldn't

22 have put the 2 there, I would have moved it a

23 little bit.

24 Q Where would you move it to?

25 A You got it right on Park Place. The

1

VOLPE

266

2

body was more right here.

3

Q All right. Why don't you take this
4 red pen and put an X as to where you think the
5 body was.

6

A I don't know if I can though, the
7 same reason I ..

8

Q You just said it was a little
9 closer.

10

A You said it was a Google map and I
11 said this is not accurate like I'd like it to be.
12 If you want to get it accurate it would have to be
13 to scale.

14

Q Knowing that it's not drawn to scale
15 and it's just a Google map, all right ..

16

A Uh-huh.

17

Q Could you do your very best in terms
18 of showing us on the map where you think the body
19 was found if it's not in the area that we've
20 circled as 2?

21

A I'm uncomfortable with it, you
22 understand why though, why I'm uncomfortable even
23 just to make a mark. I'm going to memorialize
24 something that I don't even know if it's accurate
25 based on the sizes.

VOLPE

267

1
2 Q What we're trying to do here is,
3 understanding that this is not drawn precisely to
4 scale, it's a Google map ..

5 MR. FERGUSON: What do you mean
6 precisely, it's not even drawn in any way to
7 scale.

8 Q Are you saying this map doesn't help
9 you at all in terms of just locating the general
10 area of where Theresa Fusco's body was found?

11 A I'm uncomfortable with it, but ..

12 Q I'm talking about general area where
13 number 2 is, not saying precise place where the
14 body was, right, wouldn't you agree that's the
15 general area where the body was found?

16 A I shouldn't label that way, and I'm
17 not being sarcastic, don't get me wrong, I
18 understand that this has got to be done the right
19 way but it should have been labeled as general area
20 then I would feel more comfortable with it.

21 Q This says location. I will amend it
22 and I will say general area; does that help you?

23 A Makes it easier for me.

24 Q All right, I'll put down here
25 general area, okay?

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VOLPE 268

A I'm not getting this copy, am I?

Q Yeah, that's an exhibit. We'll put down general area right there too, okay?

A I'm okay with it now.

Q Good. And would you agree from what Debbie Smith says is that she stopped, she drove north on Rockland Avenue to Sunrise Highway, the traffic light was red, I stopped for the light. I had my window partly opened because I was smoking, right? I was sitting at the light and I heard a woman scream. I rolled my window down and listened, but did not hear anything else, the scream came from the left and like it was up high, okay?

Now wouldn't you agree that where 4 is here would be the location of Debbie Smith's car, that is Sunrise and Rockland, at the time that she reported hearing the scream?

A Yes.

MR. FERGUSON: Note my objection.

A Yeah, but I --

Q Yes?

A Yes.

Q And assuming that this map is north,

1 VOLPE 269

2 okay, if she's at the location 4 wouldn't you
3 agree that when she says she heard a scream coming
4 from her left she heard a scream from the general
5 area of where Theresa Fusco's body was eventually
6 found, fair enough?

7 A I'm uncomfortable with that. I find
8 it hard to believe. It's December 9th, it's cold,
9 she got the window open because she was smoking
10 and unless you've been there, physically seen that
11 location at that traffic light, that railroad
12 mound, you couldn't even see Noble Machinery or
13 any of the businesses on the other side.

14 This is, you're talking about
15 three lanes, six lanes and an island over here.
16 Here's where she is. The four takes up west and
17 east.

18 MR. FERGUSON: Just note my
19 objection, Mr. Scheck. If I may I don't
20 know if I'm permitted to say this, you let
21 me know, but you've got Number 4 in the
22 middle of the roadway and not at the light
23 where she supposedly says she is. If I'm
24 out of line you let me know, but I think
25 this map is inaccurate.

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VOLPE

270

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Q Detective, with this red pen, all
3 right, could you draw an X in the area of the 4 if
4 you can do it more precisely as to where you
5 believe her car would have been located if she had
6 stopped at the light at Sunrise and Rockland?

7

A This is the curb, so she can't be
8 over the curb, she's got to be here and there's
9 three lanes, island, three lanes.

10

(The witness complied with the
11 request)

12

Q Now, you see that she is saying that
13 it's not December that this happened, it's
14 November?

15

A It's November.

16

Q Right?

17

A Sorry.

18

Q Is that okay?

19

A Obviously, the weather, she's only
20 opening the window enough to get the smoke out. I
21 don't know what the temperature studies were at
22 that time in November.

23

Q She's saying that in the area where
24 you put the red mark, right, she's saying she
25 rolled her window down and sometime between nine

VOLPE

271

1
2 and 12 on a night in November she heard a scream
3 coming from the general area of where Theresa
4 Fusco's body was found, right?

5 A Yes.

6 Q And that's a potential lead, isn't
7 it?

8 A Well, that's up for evaluation, you
9 have to investigate the lead.

10 Q Well, she's calling in on December
11 9th and Theresa Fusco's body was found on December
12 5th, right?

13 A One of hundreds of leads that came
14 in.

15 Q But that was a lead, right?

16 A It was a lead, that's all it was.

17 Q Well, you took the lead, right?

18 A Yeah, and you prioritize it or you
19 delegate someone to follow it up.

20 Q Well, the same day that she called
21 in at 4:25 and you took the lead sheet Detective
22 Pierce went out and immediately got a sworn
23 statement from her, right?

24 A Absolutely, yes.

25 Q One reason that this could be an

OUT H-2 Q.

VOLPE

272

1 important lead in the case is that she's parked
2 where -- she's stopping at a light. Now, Theresa
3 -- withdrawn.
4

5 Let's do it this way. Theresa Fusco
6 disappeared or she was last seen at 9:30 on
7 November 10th, correct?

8 MR. FERGUSON: Note my objection.

9 A 9:40 or something like that.

10 Q 9:40, right? She was last seen at
11 Hot Skates, correct, leaving Hot Skates?

12 A Yes.

13 Q And let's write on this map, you see
14 where it's J, is that you think a fair and
15 accurate representation of the general location of
16 where Hot Skates is?

17 A Fair and accurate, general, yes.

18 Q Just a general location, right?

19 A All of the above, yes, I can live
20 with that.

21 Q So she disappears or she's last seen
22 around 9:40, okay. This location where she's got
23 her car stopped at the light, that's near Hot
24 Skates, right?

25 MR. FERGUSON: Note my objection.

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VOLPE

273

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When you say near that's what I'm objecting to.

3

4

A What is near?

5

Q Well, it's a short distance away from Hot Skates, isn't it?

6

MR. FERGUSON: Same objection.

7

A To answer that, my definition of near and yours might be different than yours might be a quarter mile, might be an eight of mile.

8

9

Q How far is that, you know this area, don't you?

10

11

A At that time I did.

12

Q Yeah.

13

A Maybe between an eighth, maybe about an eighth of a mile, maybe a little bit more.

14

15

Q Now, you see what we've marked number 5 and identified that as Theresa Fusco's home in 1984; do you see that?

16

17

A Yes.

18

Q Would you think that is a fair and accurate representation of the general location of where Theresa Fusco's home was, right?

19

20

A Same answer, yes, generally.

21

Q So Debra Smith is hearing a scream

1

VOLPE

274

2 sometime between nine and 12 p.m. on a night in
3 November in an area that is really between Hot
4 Skates and Theresa Fusco's home, right?

5 A Yes.

6 Q And near and to the left of from
7 where she's facing, to the left of an area where
8 Theresa Fusco's body is eventually found, right?

9 A Yes.

10 Q So looking back at this now you
11 can -- wouldn't you agree that potentially Debbie
12 Smith's statement here is a pretty significant
13 lead?

14 A Well, again, the investigation or
15 the obligation to do the investigation, we have
16 her missing November 10th, I don't recollect, but
17 I think Miss Smith is after the 10th. She's
18 giving a three-day window from the 17th through
19 the 20th.

20 Q Right. But when she's filing this
21 report, she's coming forward, it's about a month
22 after Theresa Fusco disappeared, right?

23 A What is, her information?

24 Q Yes, when she's calling in this lead
25 it is now December 9th and Theresa Fusco

VOLPE

275

1
2 disappeared on December 10th, right?

3 A Her body was found on December 5th,
4 that's what lights up Debbie Smith coming forward.

5 Q Right, Debbie Smith comes forward
6 because it was reported in the press the next day
7 that Theresa Fusco's body was found, right?

8 A Yeah.

9 Q And the area where it was found,
10 right? Yes?

11 A Yeah.

12 Q She now reports an incident to you
13 that happened a few weeks earlier; correct?

14 A Her recollection, yeah.

15 Q Okay. And I show you what's been
16 marked as 160 and this is a report from Detective
17 Mitchell on December 11th who says that Debbie
18 Smith called command and states she is not sure if
19 she saw the automobile before November 17th and
20 November 20th, or between November 10th and
21 November 14th; do you see that?

22 A I certainly do, yes.

23 Q So and in your experience what's
24 really important ordinarily is sequence.
25 Sometimes witnesses when recalling something in

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VOLPE

276

2 the past get the dates mixed up, but the sequence
3 of events is very important for an investigator to
4 follow, right?

5 A Well, add a little more to this one,
6 she was trying it seemed to me when you say as an
7 investigator that she was trying to bring it in
8 with November 10th through 14th to be helpful.

9 Q Wait a second.

10 A Because her first reaction is that
11 it's the 17th through the 21st.

12 Q As you're saying this right now,
13 you're just speculating because the fact of the
14 matter is as you sit here today you have no
15 memory --

16 A I don't.

17 Q Of the Debbie Smith lead, right?

18 A I don't.

19 MR. FERGUSON: Objection.

20 A What I'm reading.

21 Q Well, you're reading that and I'm
22 just pointing out to you --

23 MR. FERGUSON: But your question was
24 about investigation, as you do
25 investigations. You mean as in general?

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VOLPE

277

Q I'm asking you a general question about investigations and the general question about investigations is often when witness comes forward to describe something that happened weeks earlier, right, they get the dates wrong, but as a trained investigator what you try to focus on are the sequence of events, right?

A I can live with that.

Q And so Debbie Smith is reporting an incident where she has a fight with her boyfriend and then she drives to this location of Rockland and Sunrise Highway and stops at a light and hears a scream from the general area of where Theresa Fusco's body is found, right?

A Right.

Q And if it turns out when she checks with her boyfriend and goes through her calendar if that is more likely to have happened on the period between November 10th, right, than in the November 17th period that would be important to you as an investigator, correct?

MR. FERGUSON: Objection.

A Well, I don't know what motivated the change with her.

1 VOLPE 278

2 Q Okay.

3 A All right, I don't recollect.

4 Q You don't remember this at all,

5 okay, let's go a little further in the statement?

6 MR. FERGUSON: Which one?

7 A Which one?

8 Q 159. Are you with me?

9 A Give me a second, okay.

10 Q Do you see it?

11 A Go ahead.

12 Q Next thing she says, "The traffic

13 light changed and I drove across Sunrise Highway

14 and under the railroad overpass. I saw a large

15 light to medium tan car, four-door sedan, early

16 '70s, it had large windows. I looked inside and I

17 saw a lot of stuff in the back seat. I think

18 there were tools, a blanket and other stuff in the

19 back seat. During this time I got out of my car

20 and I looked around towards the railroad trestle,

21 I looked at the license plate. I remember there

22 were four numbers and three letters and a shiny

23 sticker on the left side of the rear bumper. I

24 also remember that the car had a broken windshield

25 and a lick in the left," what is that, "front

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VOLPE

279

window on the dashboard."

Do you see that?

A Yes.

Q Now, is this beginning to ring a bell to you about the tan car?

A Generally. It does, but it's ringing a bell to me as I'm reading, but as far as my recollection today --

Q The next thing she says --

MR. FERGUSON: He's trying to answer the question and you're speaking over him.

MR. SCHECK: I understand. I'm sorry, I didn't mean to speak over him.

A You know, this is my recollection today.

Q Yes.

A So it's all from what I'm reading from what Pierce did, but if Debbie Smith walked in I wouldn't know her, you know.

Q But at each point along the way as you can tell, what I'm trying to do in fairness is see if any of these documents refresh your recollection and when it does you tell me, okay?

A Some do, some don't, as you can see.

VOLPE

280

1 Q All right. Now the next sentence
2 is, "Today," and that's December 9th, right, the
3 same day she reported this lead to you.
4

5 "I received a phone call from
6 Detective Joseph Volpe who asked me to come to
7 police headquarters and view a car that they have
8 there. I met with Police Officer Lane and
9 Detective Pierce who showed me a 1971 Oldsmobile
10 Delta 88 and I have looked at the car. I feel
11 that this is the car I saw that night. The only
12 reservation I have is that the interior of the car
13 does not have all of the stuff in it that the car
14 had when I had stopped by the railroad crossing."

15 Do you see that?

16 A Yes.

17 Q Now, do you remember as soon as, you
18 know, the same day that you got this lead from
19 Debbie Smith saying that she had heard a scream in
20 the area where Theresa Fusco's body is found when
21 she stopped at the light and then she said she saw
22 this tan car with a broken windshield.

23 That immediately rang a bell for
24 you, didn't it?

25 A Repeat that?

VOLPE

281

1 Q You knew what that tan car was,
2
3 didn't you?

4 A I don't recall today what I had.

5 Q Incidentally, just so we're clear
6 about this, on the lead sheet, the first lead
7 sheet which I think is 158 ..

8 A Go ahead.

9 Q In addition to saying that she ..
10 in the lead sheet looking at the second paragraph
11 down, right, or the third paragraph, do you see
12 where I am right here?

13 A Yes.

14 Q She also stated that there was a lot
15 of garbage in the rear seat and remembers a
16 blanket, thinks tools and rope. Do you see rope?

17 A Yes.

18 Q So among -- when you put the lead
19 sheet together with her statement, she saw a lot
20 of stuff in the back seat, tools, a blanket and a
21 rope; fair enough?

22 A Yes.

23 Q Now, I'm showing you what's 161,
24 premarked Exhibit 161, okay, you want to read
25 that?

1 VOLPE 282

2 A Might I please?

3 Q Sure. Do you see that -- are you
4 finished 161?

5 A Yes.

6 Q Does this document refresh your
7 recollection?

8 A I remember the car. I remember the
9 car and the incident.

10 Q Do you know whose handwriting this
11 is on 161?

12 A On 161?

13 Q Do you happen to recognize the
14 handwriting?

15 A I'm trying to. I can't, I can't.

16 Q Well, I represent to you, sir, that
17 this was a document that we found in the homicide
18 file and we don't know whose handwriting it is,
19 but I represent to you this came from the homicide
20 file?

21 A Yes.

22 MR. FERGUSON: What is the question?
23 Is there a question here?

24 MR. SCHECK: I'm about to get to it.

25 MR. FERGUSON: Okay, he's saying yes

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VOLPE

283

and I'm trying to get to the question.

Q Are you saying you recognize the handwriting or you don't?

A I don't.

Q But you can see that this is a report dated December 6th, 1984, right?

A Yes.

Q And 6:40 p.m., right?

A 1840 hours, 6:40 p.m.

Q And the person who wrote this report says, present at 58, what is that?

A Broadway, I think.

Q 58 Broadway, Malverne, New York, home of John French. He stated that on November 10th, '84 his 1971 Oldsmobile, registration 52332JN New York. His car was parked on the southwest corner of Lakeview and Ocean Avenue, it was stolen sometime between 2130 and 2305 hours. That would be what, 9:30?

A 9:30 p.m.

Q And 11 --

A 11:05 p.m.

Q That date. Now between 9:30 and 11:05, that's, on November 10th, that's around the

1 VOLPE 284

2 time that Theresa Fusco was last seen alive,
3 right?

4 A Yes.

5 Q And let me -- looking at number 3
6 on our map, okay, would you agree that number 3 is
7 drawn to be the southwest corner of Lakeview and
8 Ocean Avenue which is the location where John
9 French reported his car was stolen on November
10 10th, 1984, sometime between 9:30 and 11:05,
11 right?

12 A Yes.

13 Q Now, in the next paragraph of this
14 interview with Mr. French, all right, go back to
15 that.

16 A Got it.

17 Q He then says on November 18th, 1984,
18 Mr. French went out looking around for his car.
19 He entered Lakeview and he found it parked on
20 Woodfield near the railroad tracks. He then got
21 his keys and drove the car to the Lynbrook police
22 department. Prior to going to the police
23 department his sister, Lori, found a pair of
24 lady's bluejeans with stripes. Bluejeans were
25 inside out, jeans were found on the right rear

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VOLPE

285

2 floorboard halfway under the right passenger seat.

3 Do you see that?

4 A Yes.

5 Q Now, I show you what's been marked
6 as Exhibit 168. That is a copy of the missing
7 poster that was distributed about Theresa Fusco,
8 correct?

9 MR. FERGUSON: This is 168, okay.

10 Q Yes?

11 A Do I remember seeing this one?

12 Q Yeah.

13 A Oh, yes.

14 Q And wouldn't you agree that when
15 Theresa Fusco was last seen alive she was wearing
16 striped bluejeans?

17 A I don't recall the description
18 Mrs. Napoli gave us.

19 Q Take a look at that.

20 A Well, but I don't remember her
21 saying in her missing person report, and this, I
22 believe, was the first one. They may have amended
23 it, that's all I'm saying.

24 Q Looking at Exhibit 46 which is the
25 missing persons report, do you see where it says

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VOLPE

286

she was last seen wearing blue jeans striped;
correct?

A Yes, I do.

Q So wouldn't you agree that the tan
car that French reports as stolen, right, is the
same car that you took Debbie Smith to look at,
right?

A I don't remember if that's what it
says.

Q Isn't that what it says in your
report?

A I don't recall.

Q Go back and look at 159.

A Oh, okay, yes.

Q Right?

MR. FERGUSON: 159 is not his
report. What are you referring to?

Q I'm referring to 159 that is the
sworn statement by Detective, taken by Detective
Pierce, where Debbie Smith says that she received
a call from Detective Volpe who asked me to come
to police headquarters and view a car that they
have there. Do you see that?

A Yes, Yes, Yes.

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VOLPE

287

Q And that was the tan car that John French reported stolen, right?

A Yes.

Q And he reported it stolen at or around the time on November 10th that Theresa Fusco went missing, right?

A Within the time frame.

Q Yes, within the time frame, right?

A 9:30 to 12 -- whatever he said on his report.

Q And now French is saying that his sister found a pair of striped jeans, lady's jeans, underneath the right rear seat of the car turned inside out, right?

A Okay, yes.

Q Now, don't you think that that's a pretty important lead?

A I don't have a clear recollection right now, but that whole portion of that investigation was followed up.

Q Well --

A I just don't remember.

Q I understand you don't remember.

A What the end result was.

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VOLPE

288

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Q I know you don't remember, but just

3

going through the documents, right, and examining

4

them, wouldn't you agree with me that Debbie Smith

5

reports seeing a tan car in the area where Theresa

6

Fusco's body was found, right. Yes?

7

A Yes.

8

Q And then you take her and you show

9

her a car that John French reported being stolen

10

that night, right?

11

A Yes.

12

Q And John French says that when he

13

found the car later on November 18th in that car

14

were striped lady's jeans, right?

15

A Yes.

16

Q Now, as a trained investigator

17

wouldn't you think that there was a chance that

18

somebody, the perpetrator of this crime, had

19

abducted Theresa Fusco in that tan car, disrobed

20

her there and the jeans that had been turned

21

inside out, the lady's striped jeans, came from

22

Theresa Fusco?

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A My problem in answering that is that

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I can't recall how that lead was finished.

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Q Well, we're going through this right

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289

now.

A But we're just starting.

Q We're just starting it.

A Now this is the finding of the car,
I don't recall what the forensics on the car was.
I don't know if there was anything in the car that
was any value to us.

Q Let's just take it a step at a time,
all right, Detective?

A I hope you would.

Q Wouldn't you agree that it is an
important working theory one would have as an
investigator that when Debbie Smith says she saw
this tan car in the area where Theresa Fusco's
body was found, right?

A Yes.

Q And that car had in it striped jeans
which are consistent with the description of the
last -- of the clothing that Theresa Fusco was
last seen wearing, right?

MR. FERGUSON: Objection. She
didn't say this car had striped jeans. The
way your question is phrased, it says, she
said.

VOLPE

290

MR. SCHECK: I'll withdraw that.

Thanks.

Q She said she saw this tan car,
right?

A Yes.

Q And let's look at the top of her
statement here, all right, 159?

A 159.

MS. BEN-SOREK: What page?

MR. SCHECK: The third page of her
statement.

Q She also says, I also remember that
the car had --

A Wait a minute, third page. I
thought you said the top. Sorry, go ahead.

Q I also remember that this car had a
broken windshield. See that?

A Yes.

Q Let me introduce to you, we'll mark
it as 167 and here's 169.

When you look at 167 and 169, don't
you recognize this to be photographs that were
taken of the John French car on December 6th,
1984; correct?

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VOLPE

291

A By the documentation, yes.

Q And if you notice at the top of 167
it indicates that the vehicle had a cracked
windshield, right?

A Correct.

Q And that's consistent with what
Debbie Smith said she saw, right?

A Yes.

MR. FERGUSON: Can you give me a
chance to look at these documents. This
document is not dated. You got to put the
date on this exhibit sticker, no?

MS. CORNWALL: That will be done.
You have courtesy copies as well.

MR. FERGUSON: Okay, but I'm trying
to just look at them a second.

MS. BEN-SOREK: I ask we agree that
there are 11 photographs attached in 169 for
the record. Just make sure that we have it
all.

MS. CORNWALL: Yes.

MS. BEN-SOREK: Thank you.

THE WITNESS: We're good, 11.

Q Now, do you have any recollection of

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VOLPE

292

this car now? I'm asking you for your independent recollection.

A I have no recollection of this portion of the investigation with French's car.

Q Okay. What is your recollection?

MR. FERGUSON: Objection. What is the question?

Q What do you remember about this, about the investigation of French's car, what is it that you remember?

A That I remember Debbie Smith, the car, the recovery of the car, report that it was stolen and recovery by the owner and the evaluation. I don't recall the results of the evaluation by the lab on the car, in other words the processing of the car. I just don't remember it.

Q Now, there was a Detective Doughty that was working on this case, right, do you remember there was a Detective Doughty?

A From missing persons bureau, Detective Doughty.

Q Now, we have 62. Let me just show you a copy of 62. Let me see if this refreshes

VOLPE

293

1 your recollection.

2
3 MR. FERGUSON: Can I see what you're
4 showing him before you ask anything.

5 MR. SCHECK: Yes, take a look at the
6 highlighted paragraph, okay.

7 MR. FERGUSON: Is this 62 or
8 something else, this is 62?

9 MR. SCHECK: Yes, Bates stamp number
10 5425, okay. Why don't you look on with your
11 lawyer, okay?

12 MR. FERGUSON: Let me just see what
13 this is first.

14 Q Now, you see here that in Doughty's
15 investigation he says and I'm reading from
16 Bates stamp page 5425. On November 23rd Detective
17 Bailey and I went to the Lynbrook Police
18 Department. There we received information that a
19 John French had reported his car stolen on
20 November 11th from Lakeview Avenue and Ocean
21 Avenue. The car was recovered on November 18th
22 with different plates on it by the owner at
23 Lakeview. Bluejeans that were found in the car
24 were turned in to the Lakeview Police Department
25 to Sergeant Sprraig (phonetic). He saw Sergeant

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VOLPE

294

Spraig later that evening and he said the pants were thrown into the garbage.

Do you see that?

A Yes.

Q So obviously Spraig didn't realize the importance of these striped jeans that were found inside out in the French car, right?

A I don't recall this, but --

Q Doesn't that make sense to you based as an investigator?

MR. FERGUSON: What's your question?

Q Obviously the Lynbrook police when they got this car from French on November 18th they didn't know about the Debbie Smith call, right? Debbie Smith didn't call in until November, November 9th, right?

MR. FERGUSON: November 9th?

Q December 9th, I'm sorry, December 9th, right?

A Yes.

Q So doesn't it appear to you as though the Lynbrook police, it turns out, threw these jeans away?

A My difficulty is that the

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VOLPE

295

jurisdiction where the car is found is not
Lynbrook's jurisdiction.

Q What does that matter?

A It doesn't matter, but.

Q It was told to the Lynbrook police
department. I'm trying to be very specific with
you now, okay? Based on what Debbie Smith said
there was a tan car that she says was French's
car, right?

MR. FERGUSON: She didn't say it was
French's car.

MR. SCHECK: That is not true.

MR. FERGUSON: You want to be
specific?

Q Did she not state, say in her
statement, that she believed that the car she was
taken to see by you on December 9th, right, which
was French's car, is the car that she saw that
night?

A But she didn't know John French.
Isn't that, comma, which is French car, comma?
That's the detectives writing that statement. I
don't have any recollection of Debbie knowing John
French.

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VOLPF

296

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Q That's not the point of my question

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and you know it.

4

A What is it?

5

Q My point is that Debbie Smith said

6

in her sworn statement to Detective Pierce that

7

the car that she saw on a November night in the

8

area --

9

A Well, on a November night, okay.

10

Q -- where Theresa Fusco's body was

11

found was John French's car, right, she said that?

12

A Yeah, we brought her in to view the

13

car.

14

Q Right, and she said that's the car I

15

saw, right?

16

A Yeah, yes.

17

Q And before she had seen the car she

18

said she seen a car with a broken windshield that

19

was tan car, right?

20

A Yes.

21

Q And that matched exactly what

22

French's car was like, right?

23

A Yes.

24

Q And we now know that in French's car

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on November 18th striped lady's bluejeans had been

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VOLPE

297

found under the rear seat, right?

A Yes.

Q And that would be consistent would it not with Theresa Fusco having been abducted by somebody and her striped bluejeans being taken off and left in the car, right?

A I can't, I just can't agree with that. I mean, there's a lot of information there, but I can't make it an absolute that Theresa Fusco was in French's car that night. I just can't do it.

Q I'm not asking you for an absolute. I'm asking, looking at this information, wouldn't you agree that was a theory that you were developing after you got the Debbie Smith call?

A Correct.

Q And doesn't it make sense that if she saw a tan car with a broken windshield and the windshield wasn't broken when the car was stolen on November 10th, that would indicate that there might have been a struggle in the car with Theresa Fusco and that's how the windshield got broken?

MR. FERGUSON: Objection.

A Oh, I can't agree with that, I

VOLPE

298

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2 can't.

3 Q You really can't, why not?

4 MR. FERGUSON: Objection.

5 A I don't know the quality of the
6 glass, I don't know punching it, kicking it,
7 pitchfork. A cracked windshield is the
8 strongest window in the car, the windshield, front
9 windshield.

10 Q Well, let me show you ..

11 A I saw the picture.

12 Q I understand. Just so that .. I'll
13 show you 162, okay? And you can see that's a
14 report from Mitchell, correct?

15 MR. FERGUSON: Can we have a chance
16 to look at this?

17 MR. SCHECK: Yes.

18 MR. FERGUSON: What number is this?

19 MR. SCHECK: 162.

20 Q Do you see that, this is a statement
21 taken from John French on December 11th, 1984, by
22 Detective Mitchell, right?

23 A Notes, yeah, notes of Mitchell.

24 Q And Mitchell says that the
25 windshield of his car was not broken prior to it

1 VOLPE 299

2 being stolen, right?

3 A Yes.

4 Q So now we have French's car being
5 stolen at location number 3, right, between 9:30
6 and 11 on November 10th, the night that Theresa
7 Fusco went missing, right?

8 A Yes.

9 Q And Debbie Smith reports seeing this
10 same car with the windshield broken near the area
11 where Debbie Smith's body was found, right?

12 A Where Theresa Fusco's body was
13 found.

14 Q Theresa Fusco's body was found,
15 right?

16 A Yes.

17 Q And there were also striped ladies
18 bluejeans that were found inside out that were
19 found in French's car when he eventually recovered
20 it, right?

21 A Right.

22 Q Now, putting that together as a
23 detective isn't it logical to you that one
24 possible lead here is that Debbie Smith heard a
25 scream from Theresa Fusco on the night of her

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VOLPE

300

murder and that when she drove through the intersection and saw this tan car that had been stolen from John French, the perpetrator was off with Theresa Fusco?

A Problem I have answering that question is, I'm trying to figure out what was done on the French/Debbie Smith lead, meaning the car in its entirety and the canvas, whatever else, I don't remember what we did.

Q Well, I'll go through that with you.

A You know what we did on that whole car and French.

Q Absolutely, but I'm only going through one step at a time.

A Appreciate that.

Q This document, Debbie Smith's statement that you got on December 9th, you immediately had taken her to see the French car, right?

A Absolutely.

Q And looking at this paperwork, the reason that seemed so important is that she had been stopped in an intersection, right, near the general area where Theresa Fusco's body had been

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VOLPE

301

found; correct?

A Yes.

Q She heard a scream during a time period in the evening which was just after Theresa Fusco had last been seen alive, correct?

MR. FERGUSON: Just note my objection.

A Yeah, I mean I have a problem with that.

Q Well --

A If she heard a scream and she stopped and got out of her car to look at French's car, what we now know to be French's car, you wouldn't have a time, she still leaves it that three hour time. I'm at an a disadvantage because I don't recall --

Q We can go over the statement again now?

A I can't now because I'm just about starting to feel it, all right. I'm trying to go as long as I can with you.

MR. FERGUSON: Do you want to take a short break or do you want to keep on going.

MR. SCHECK: Well, it's up to him.

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VOLPE

302

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I know he doesn't have much time left.

3

A It's over an hour.

4

Q Just one more thing for you to

5

consider, okay? If you're able, one little thing

6

I'll point out to you here?

7

A Okay, yeah, then I want to use the

8

men's room. Go ahead.

9

Q You notice that French indicated

10

that there was a rope that was missing from his

11

car, correct?

12

A Something he describes as ..

13

MR. FERGUSON: You saying French

14

said that, is that what you're saying?

15

MR. SCHECK: Yes.

16

MR. FERGUSON: What document are you

17

referring to here?

18

MS. CORNWALL: 162.

19

A Doesn't this say, this is loss from

20

his auto so he lost all his tools and the rope.

21

See, I don't recall what this picture is from.

22

Q I'll show you what that is. But you

23

remember Debbie Smith saying in her statement in

24

her call sheet in her statement to you that in the

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back seat of French's car she saw tools and she

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VOLPE

303

saw a rope, right? Do you recall seeing that, a rope?

A The lead sheet.

Q In the lead sheet, it says rope, do you remember that?

MS. BEN-SOREK: The record referred to exhibit...

A 158.

MS. BEN-SOREK: 158.

A Read that four lines for me. Blanket, thinks tools and rope. Thinks tools and rope. She wasn't positive on this. You're asking me to read what she wrote?

Q Rope.

A She says, thinks, thinks tools and rope.

Q You see that French said ..

A What he lost.

Q There was a rope missing from his car, correct?

A Yes.

Q Now Theresa Fusco was murdered by ligature strangulation, right?

A Yes.

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304

Q And there were -- and reading now from Exhibit 56, the autopsy report, let's see if this refreshes your recollection.

MR. FERGUSON: You're saying that's an autopsy?

MR. SCHECK: Yes.

MR. FERGUSON: 56.

Q The neck shows an extensive ligature abrasion about the neck measuring one inch on the right and central portions expanding approximately to one and three quarters inches over the region of the left carotid with a complete encircling of the neck structure, it is deep and reddish black in color with abrasions on the skin.

Do you recall that?

A Generally I recall. I haven't read that document in 25 years.

Q But you do recall that she was -- cause of death was ligature strangulation?

A Yes.

Q And that would be consistent with being strangled by a rope, right?

A It's one of the tools of a ligature strangulation, is a rope.

VOLPE

305

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2 Q Yeah. And the injuries described in
3 this autopsy report it's fairly extensive ligature
4 strangulation, it goes around the whole neck,
5 right?

6 A Yes.

7 Q And wouldn't you agree, this is the
8 last question before you take a break or however
9 you want to do it, wouldn't you agree that on
10 December 9th when you got the lead from Debbie
11 Smith the reason that you immediately took her to
12 see John French's car is you thought that given
13 what she said she saw, John French's car was
14 involved in the homicide, right?

15 A Well, not at that point. Just that
16 it was an interesting lead to turn in to the
17 investigation, it was very interesting.

18 Q Very interesting lead, right?

19 A But, you know, I didn't make a
20 decision that John French's car was used in a
21 homicide, couldn't.

22 Q I'm asking you the reason that you
23 immediately took her to see John French's car is
24 that after hearing the incident that Debbie Smith
25 reported you thought that that car could have been

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306

involved in the homicide, right?

A You know, I don't want to get to the point of tunnel vision at that time. It was something that I was very interested in and we followed it up accordingly.

Q But the reason you followed it up was that you thought it was possible that John French's car had been involved in the homicide, right?

A Well, to me it was a lead that had to be investigated. Did you hear me counselor? To me it was a lead that had to be investigated.

Q Why?

A Because of all the little one, two, three, four, fives, all the information we got from Debbie Smith.

Q I just want to review that with you. But the reason it had to be investigated is that Debbie Smith said that she was parked in an area around the time in the evening in November that Theresa Fusco went missing, right?

A Uh-huh.

Q Yes?

A Yes.

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307

Q That she heard a scream from --

A I have to back up on that one because I have two times. I have two dates rather. I know she changed it from the 17th to the 21st to the 10th through the 14th.

Q Right.

A That forces me to keep an open mind on that.

Q Right, but putting the date aside for a second, I'm just reviewing the reasons why you took her to see that car, okay, why it was a promising lead, would that be a fair statement?

A If it was an accurate lead, sure.

Q Okay, and the lead, the possible lead that you were investigating was that Debbie Smith had been stopped at a light in the area where she heard a woman scream during the period that Theresa Fusco had been last seen alive, right?

A Well, I'm not going to say my recollection of it just because she told me she heard a scream that it was a scream or that it was Theresa Fusco's scream. We're doing an investigation. I have to do French's car with

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VOLPE

308

her, there's so many things.

Q I'm only trying to go back over what
the reason you ..

A I can't lock myself into it being
that.

MR. SCHECK: I think the tape is
almost done all, okay.

THE VIDEOGRAPHER: The time is 1:01
p.m., this concludes tape number one of the
videotape deposition of Mr. Joseph Volpe.

(Time Noted: 1:01 p.m.)

309

A C K N O W L E D G M E N T

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

I, JOSEPH VOLPE, hereby certify that I
have read the transcript of my testimony taken
under oath in my deposition of April 6, 2009; that
the transcript is a true, complete and correct
record of what was asked, answered and said during
this deposition, and that the answers are true and
correct.

JOSEPH VOLPE

Subscribed and sworn to
before me this _____ day
of _____, 2009.

NOTARY PUBLIC

1				310
2	I N D E X			
3	WITNESS	EXAMINATION BY		PAGE
4	JOSEPH VOLPE	MR. SCHECK		6
5				
6				
7				
8				
9	E X H I B I T S			
10	PLAINTIFF'S EXHIBITS			
	FOR IDENTIFICATION		PAGE	LINE
11				
12	158	Debbie Smith		
13		lead sheet	4	3
14	159	Statement of		
		Debra Smith	4	6
15	160	Debbie Smith		
16		call	4	9
17	161	12/6/84 interview		
		Of John French	4	12
18	162	Loss from John		
19		French's car	4	15
20	163	John French		
		statement	4	18
21	164	People in French's		
22		car	4	21
23	165	French car		
		fingerprint reports	4	24
24	166	French missing car		
25		report	5	3
		(Continued)		

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2	E X H I B I T S (CONTINUED)		PAGE	LINE
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4	167	Crime scene search		
5		unit document	5	6
6	168	Missing peson flier	5	9
7	169	11 pages-photographs	5	12
8	170	Google area map	5	15
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C E R T I F I C A T E

STATE OF NEW YORK)

ss.:

COUNTY OF SUFFOLK)

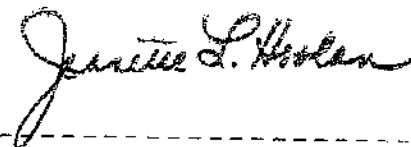
I, JEANETTE L. HOOLAN, a Notary
Public in and for the State of New York, do
hereby certify:

THAT the testimony of JOSEPH VOLPE was
held before me at the aforesaid time and place.

THAT said witness was duly sworn before
the commencement of the testimony and
that the testimony was taken stenographically by
me and is a true and accurate transcript of
my stenographic notes.

I further certify that I am not related to
any of the parties to the action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 17th day of APRIL, 2009.



JEANETTE L. HOOLAN

1	313			
2	E R R A T A S H E E T			
3	DEPOSITION OF: JOSEPH VOLPE			
4	RE: RESTIVO VS. NASSAU COUNTY			
5	DATE TAKEN: APRIL 6, 2009			
6	PAGE	LINE	CORRECTION	REASON
7	---	---	-----	-----
8	---	---	-----	-----
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17	---	---	-----	-----
18	---	---	-----	-----
19	---	---	-----	-----
20	---	---	-----	-----
21	-----			
22	JOSEPH VOLPE			
23	Subscribed and sworn to			
24	before me this ---- day			
25	of -----, 2009.			

	NOTARY PUBLIC			

1

248:7,11,15	call 234:9 256:2	299:10,19	colored 257:21
249:6,17,18	256:9 280:5	300:3,9,13,19	come 240:24,24
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